

Assam Schedule VII, Form No. 132
HIGH COURT FORM NO. (J) 2
HEADING OF THE JUDGMENT IN ORIGINAL SUIT

**IN THE COURT OF THE DISTRICT JUDGE,
LAKHIMPUR, AT NORTH LAKHIMPUR.**

Present: Smt S.P. Khaund, (M.A. Economics, L.L.B.),
District Judge,
Lakhimpur, North Lakhimpur.

Wednesday, the 28th day of April, 2021.

TITLE APPEAL NO.1/2015.

Appellants : Md. Osman Gani and 11 others.

Respondents : Sri Mitharam Narah and 53 others.

This suit/case coming on for final hearing on
03.04.2021 & 17.04.2021.

In presence of :-

Mr. Eunos Ali, Advocate, learned counsel for the
Appellants.

Mr. Ghanashyam Saikia, Advocate, learned counsel
for the Respondents.

And having stood for consideration to this day the
Court delivered the following
judgment :

JUDGMENT & ORDER

1) This Appeal is preferred u/s 96, Read With Order XXI rule 103, Order XLI rule 1 and 2 of the Code of Civil Procedure (CPC for short), by Osman Gani and 11 others against Sri Mitharam Narah and 53 other, Respondents seeking defeasance of the Order dtd. 16.12.2013 passed by the Civil Judge, Lakhimpur, at North Lakhimpur, in Misc. (J) Case No.3/2011.

Avertments and submissions :

2) The bone of contention is that the Appellants were not parties in Title Suit No.13/1994, which was decreed against them.

3) Per contra, it is submitted by the Respondents that they are the Decree holders. When the decree was about to be executed vide Title Exn. No.4/2009, the Appellants resisted the process of execution and they filed Misc. (J) Case No.3/2011, which was dismissed vide order dtd. 16.12.2013, on the ground that the Appellants were strangers to the connected decree, denying their right to resist or object the execution process. It is also added by the Respondents that another stranger, Nekbor Ali filed an application under rule 99 to rule 103 of Order XXI CPC against execution of the Decree of

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Title Suit No.13/1994, which was dismissed by the Civil Judge. It is contended that an order passed u/s 47 CPC is not appealable. Section 104 CPC provides for appealable orders, and Section 47 CPC is not within the realm of appealable orders as per dispensation of Section 104 CPC.

4) Moreover, Section 99-A CPC reads that **“No order u/s 47 CPC to be reversed or modified unless the decision of the case is prejudicially affected.”**

6) The cases relied on by both the parties and the remaining contentions of both the parties will be discussed at the appropriate stage.

BACKGROUND FACTS :

7) The Appellants in this case are -

1.Osman Gani.	5. Abdul Malek.	9.Abubakkar Siddique.
2. Suruj Ali.	6. Mayjul Islam.	10. Jahur Ali.
3. Husan Ali.	7. Sofiquil Islam.	11. Abdul Kalam.
4. Abu Taleb.	8. Abdul Korim.	12 Basir Ali.

8) The Respondents in this case are -

1. Mitharam Narah.	19.Jongkanam Narah.	37. Abha Narah.
2. Kachan Narah.	20. Lakhyadhar Mili.	38. Baneshri Payeng.
3. Anil Narah.	21.Bigiram Narah.	39. Amilal Payeng.
4. Pharing Payeng.	22. Meme Mili.	40. Angkeswar Sintey.
5. Lalit Mili.	23.Nandeswar	41. Puya Mili.
6. Sunil Narah.		42. Bijoy Mili.
7.Damala Dutta Narah.		43. Gama Payeng.
8. Kekem Narah.		44. Ajit Narah.

9. Birchan Payeng.	Narah.	45. Chenai Mili.
10. Motilal Mili.	24.Khudiram	46. Upendra Mili.
11.Rongamoni Kaman.	Narah.	47. Hemanta Mili.
12. Apuhi Narah.	25.Lakhidhar	48. Latur Sintey.
13.Purnananda Narah.	Payeng.	49. Sublai Mili.
14. Pampal Narah.	26.Chumu	50. Punaram Mili.
15. Marka Bodi.	Kaman.	51. Bidya Payeng.
16. Doley Mili.	27.Mogiram	52. Kutur Mili.
17. Amul Narah.	Narah.	53. Motiram Payeng.
18.Gojendra Narah.	28.Remal	54. Maldar Payeng.
	Narah.	
	29.Umaram	
	Narah.	
	30.Tonai	
	Kardong.	
	31.Kameswar	
	Narah.	
	32.Malehan	
	Narah.	
	33.Deben	
	Kardong.	
	34. Lalit Taye.	
	35. Bhogeswar	
	Mili.	
	36.Sonalai	
	Payeng.	

9) The genesis of the present lis is that a Title Execution Case No.4/2009 was filed by the Respondents, Sri Mitharam Narah and others as Decree holders for execution of the Decree, vide Judgment and Decree dtd. 18.12.2001 in Title Suit
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No.13/1994. The Appellants were not made parties in the Title Exn. No.4/2009 and writ was issued against the Appellants. However, the Appellants filed a Petition No.135/2011 dtd. 16.06.2011 u/s 47 and 151 CPC, which was registered as Misc. (J) Case No.3/2011. Through the Petition u/s 47, 151 CPC, the Appellant, Osman Gani and 11 others have expressed their objection against execution of the Decree. I would not like to reiterate the facts again. The Appellants specifically described the land occupied by them in the schedule of the Petition u/s 47, 151 CPC. Twelve (12) schedules were specifically mentioned and schedule 'A' and 'B' of the Petition described the decretal land, against which Decree was proposed to be executed.

10) I have carefully perused the Petition. It is true that schedule 'A' and schedule 'B' described in the plaint in Title Suit No.13/1994 does not include the Dag number and Patta number. However, the Civil Judge vide order dtd. 16.12.2013 dismissed the Petition filed by the Appellants. On the basis of the Judgment and Decree passed in Title Suit No.13/1994, the Respondents/ Plaintiffs have initiated the execution proceedings. Another

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contention of the Appellants/ Petitioners is that the schedule 'A' and 'B' described in the plaint of Title Suit No.13/1994 does not specifically describe the land, and so they have resisted the execution.

11) In refutation, the Respondents through their written objection submitted that the Misc. (J) Case No.3/2011 is not maintainable. The schedule 'A' and 'B' have been properly described in Title Suit No.13/1994. The Petitioners have no title over the plot of land described in the schedule of the Petition and they are strangers of the suit and the Petition is liable to be dismissed. The Respondents have also stressed that the Appellants are not tribals and so they are unauthorised occupants of the scheduled land. The Civil Judge dismissed the Petition because Section 47 CPC contemplates that -

" (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit."

12) It was held by the Civil Judge that as the Petitioners were not parties to the suit being Title Suit No.13/1994, nor were they representatives of the parties, they are strangers to the suit. It was

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held that Petitioners have specifically mentioned in their Petition that they are not related to the parties, particularly to the Defendants, and being strangers, their Petition u/s 47 CPC is not maintainable.

13) The Respondents / plaintiffs filed a Title Suit No.13/ 1994 in the court of Civil judge, Lakhimpur, at North Lakhimpur, against Mansur Ali and others, with prayer for recovery of khas-possession of the suit land and for permanent injunction on the basis of right, title and interest of the plaintiffs over the suit land. The suit was decreed vide Judgment and Decree dtd. 18.12.2001, and thereafter, the Respondents / plaintiffs filed Title Execution No.4/ 2009 to execute the decree of Title Suit No.13/ 1994. In Title Exn. No.4/2009, the Appellants filed objection u/s 47 CPC RW Sec.151 CPC, stating therein that the Appellants/ petitioners were, and are still in possession of the decreetal land for the last five decades, and they have been occupying and cultivating the same. This petition preferred by the Appellants was registered as Misc. (J) Case No.3/2011. The decreetal land is described under schedule 1 to XII of the Petition in Misc. (J) Case No.3/ 2011.

14) It is contended that just before the Misc. (J) Case No.3/2011 was filed, the Laot Gaonburah (village headman) of their locality informed them

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that they had to vacate the land in connection with execution of the decree of Title Exn. No.4/2009. The Appellants were taken aback by the sudden shocking news, as they were not parties to any suit. They tried to unearth the matter and then, they learnt that a notice had been issued to the Gaonburah of their village i.e., Borsola No.2 village, through which they were asked to be present for delivery of the land measuring 228 Bighas covered by Dag No.428 of Borsola No.2, Nowboicha, bounded by -

(North - Borsola Tribal block ;
 South - Pandhowa Tribal block ;
 East - Borsola No.2 ;
 West - Miri Bbheti and Govt. land ;) **(A)**

in connection with Title Exn. No.4/2009 based on Title Suit No.13/ 1994 filed by Rameswar Narah and 48 others for recovery of the suit land, which included the land described above as well as 170 Bighas of land in Borsola No.2, Nowboicha, Lakhimpur, bounded by -

(North - Mising village.
 South - Land occupied by Md. Sohoruddin under Pandhowa Tribal block.
 East - Another Mising village.
 West - Govt. land.) **(B)**

15) The Title Suit No.13/1994 was disposed of in the year, 2001 and the Appellants were not impleaded as parties to the suit.

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16) It is contended that in the Title Suit and Title Execution case, the land under schedule 'A' of the plaint was not properly described as the patta number was not included and the schedule 'B' land did not include the Dag No. of the suit land. It is averred that the Decree dtd. 18.12.2001 is not executable. It is averred that trespassers cannot be evicted from any land without following due process of Law. The Appellants have claimed that they were not served with any individual notice in Title Exn. No.4/2009, which was filed after a lapse of 8 years, after the Judgment and Decree. It is averred that Title Suit No.13/1994 was filed in a random manner without ascertaining the possession and ownership of the land, and the Decree was obtained against the aggrieved with a view to curtail their ownership rights. It is ardently submitted that the Appellants have been occupying the suit land for five decades even before constitution of the Tribal Belts and Blocks. It is submitted that the Appellants are in possession of 147 Bighas of land covered by Dag No.428 Touzi Patta Nos.128, 201, 141, 205, 143, 108, 126, 127, 120, 123 and 125. which is also clearly mentioned along with the area in the Objection Petition u/s 47 RW Sec.151 CPC filed by the Appellants in Title Exn. No.4/2009. This objection petition was registered as Misc. (J) Case

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No.3/2011. Vide order dtd. 16.12.2013, the Civil Judge dismissed the Petition on the ground that it was not maintainable.

17) The order is impugned by the Appellants on the ground that the Civil Judge ought have decided the Petition in order of merit and in view of the provisions of Order XXI rule 97, 99, 100 and 101 CPC, and thereafter ought to have decided the facts whether the land in possession by the Appellants/ Petitioners are part of the suit land.

18) It is strenuously submitted that the Appellants/ Petitioners are not liable to be evicted because the plots of land under their possession are not parts of the suit land and they have been in possession of the same for the last five decades. The Appellants have prayed to set aside the order dtd. 16.12.2013 passed in Misc. (J) Case No.3/2011 arising out of Title Exn. No.4/2009.

DECISION :

19) I have carefully scrutinised the relevant documents and the order of the Trial Court. The Trial Court spelt out sound reasonings while dismissing the Petition u/s 47 of the CPC. The Title Execution case is kept in abeyance and this Misc. case arising out of Petition u/s 47 of the CPC has stalled the execution of the decree. In legal parlance, a third party to any proceeding can be heard, but in this

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case, the Petition was filed u/s 47 of the CPC, which envisages that all questions arising out between the parties to the suit or the representatives relating to a decree, execution or satisfaction of a decree, shall be determined by the court executing the decree and not by a separate suit. The Appellants themselves have stressed that they are third parties and not related in any way to any of the parties or their representatives.

20) Moreover, as per Section 99-A of the CPC - **No order u/s 47 of the CPC shall be reversed or modified unless the decision of the case is prejudicially affected - without prejudice to the generality of the provision of Sec.99, no order u/s 47 of the CPC shall be reversed or substantially verified on account of any error, defect or irregularity in any proceeding relating to such order, unless such error defect, irregularity has prejudicially affected the decision of the case.**

21) In the instant corresponding case, no such error, defect or irregularity prejudicially affecting the decision of the case could be deciphered. The Civil Judge correctly passed the order, impeached by the Appellants. The order was passed within the realm of Section 47 CPC.

22) It has been held by the Hon'ble Supreme Court in *Brakewel Automotive Components (India) Private*
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Limited -vs- P.R. Selvam Alagappan (2017) 5 SCC 371 that, **“23. Though this view has echoed time out of number in similar pronouncements of this Court, in Dhurandhar Prasad Singh -vs- Jai Prakash University², while dwelling on the scope of Section 47 of the Code, it was ruled that the powers of the court thereunder are quite different and much narrower than those in appeal / revision or review. It was reiterated that the exercise of power under section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree unexecutale after its passing. None of the above eventualities as recognised in law for rendering a decree unexecutable, exists in the case in hand.”**

23) Reverting back to this case, I record my concurrence to the order passed by the Civil Judge in dismissing the Petition u/s 47 of the Code. The Civil Judge was unable to pass order beyond the

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scope of Section 47 CPC, moreso, when the decree was not void ab initio or a nullity.

24) I would also like to refer to the decision of the Hon'ble Gauhati High Court in *Tapan Chandra vs Dulal Chandra*, AIR 1980 Gau. 3 that, "**15. As a result of the foregoing discussions, I arrive at the conclusion that determinations made under Section 47 Civil P.C. on or after 01.02.1977 are not decrees and therefore not appealable. No right of appeal has been conferred by Section 99-A or any other provision of the Amendment Act. As the order of the learned Subordinate Judge was passed under Section 47, Civil P.C on 29.04.1977 no appeal lay against his order, the Additional District Judge, Agartala acted without jurisdiction in entertaining and disposing of the appeals and the impugned appellate judgment dtd. 24.11.1977 in the Misc. Appeals is set side. However, the appellate Court may return the memorandum of appeals to the opposite parties (appellants therein) for due presentation before this Court as revisions. Parties will bear their respective costs in the revisions.**" This decision (Ibid) was relied upon by the Appellants.

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25) In the instant case, it is thereby held that this Appeal is devoid of merits and is liable to be dismissed.

26) When the Appellants have not filed any petition under Order XXI Rules 97, 99, 100 and 101 of the CPC, the Civil Judge did not make any order under the aforesaid Sections of Law. The argument on behalf of the Appellants that this Court can pass any order beyond the demurrals of the Appeal memo., is baseless. It is true that an Appellate Court can pass an order beyond the recitals of an Appeal memo. However, it is no longer *res integra* that an Executing Court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardizing the rights of the parties. Moreover, this Appeal was preferred on a petition u/s 47 of the Code.

27) An appeal is a continuation of suit. The reliefs sought by the Appellants cannot be granted through this Appeal. The Appeal is against the order under Section 47 and 151 of the CPC. So, this Appellate Court cannot pass any order under Order XXI rules 97, 99, 100 and 101 of the CPC as this court is not the executing court. This court can pass an order, which traces back to the execution case i.e., Misc. (J) Case No.3/2011 and subsequently, Title Execution Case No.4/2009. The decision referred to by the Appellants in Pruthvirajsinh

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Nodhubha Jadeja (D) by L.Rs. -vs- Jayeshkumar Chhakaddas Shah and others, 2019 (203) AIC 22 (S.C), wherein it has been observed that it is well a settled law that mere non-mentioning of an incorrect provision is not fatal to the application if the power to pass such an order is available with the court, is not relevant to this Appeal.

28) Regarding the argument of the Appellants relating to their rights over land even in the tribal belt, it is held that this relief is de hors the scope of provision under Section 47 of the CPC.

29) In view of my foregoing discussions, this Appeal is hereby dismissed.

30) No order as to costs.

31) Send back the LCR with a copy of this Judgment and order.

Judgment is signed, sealed and delivered in the open Court on the 28th day of April, 2021.

(S.P. Khaund)
District Judge,
Lakhimpur, North Lakhimpur.

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Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
District Judge,
Lakhimpur, North Lakhimpur.

Transcribed and typed by :
Sri Satyabrata Kshattri, Stenographer.